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IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1974

NO. 73-1195

SAMUEL SCHNEIDEMAN, doing business as ADEPTCO, Petitioner,

v.

RAILWAY EXPRESS AGENCY, INC., a corporation;
AMERICAN PRESIDENT LINES, LTD., a corporation, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
and
REQUEST FOR SUMMARY REVERSAL
and
MOTION TO VACATE THE JUDGMENT BELOW

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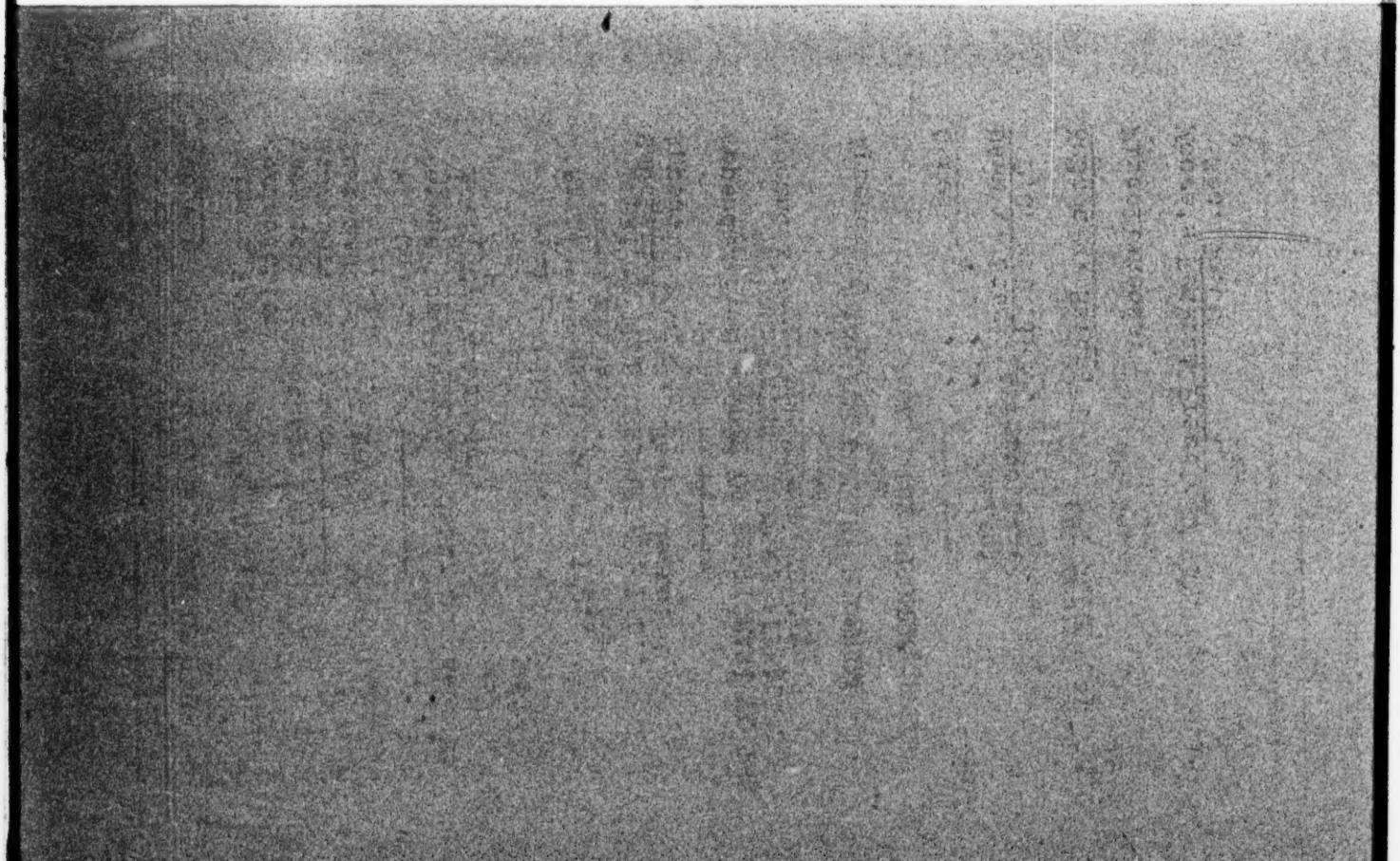
February 1, 1974



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The Petitioner, SAMUEL SCHNEIDEMAN, doing business as ADEPTCO, respectfully

prays that a Writ of Certiorari be issued to review the judgment of the Ninth Circuit United States Court of Appeals entered on October 15, 1973.

Petitioner further suggests that a summary reversal of the judgment may be justified, or a vacating of the judgment below and remanding to the lower court for further proceedings.

OPINION BELOW

No opinion was rendered by the District Court for the Northern District of California or by the Court of Appeals. The District Court's judgment appears at Appendix A, and the Memorandum entered by the Court of Appeals is at Appendix B.

JURISDICTION

The judgment of the Court of Appeals of the Ninth Circuit was entered on October 15, 1973. A timely petition for rehearing en banc was denied on November 9, 1973, and this petition for certiorari was

filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Whether Summary Judgment should have been entered against the Petitioner upon a Motion of Respondent which was made shortly after the filing of Pretrial Statements which set forth several issues disputed facts which were material.

2. Whether Summary Judgment under Rule 56 of the Rules of Civil Procedure could legally be granted in an instance where improper notice was given to the party against whom the judgment was entered.

STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 56 Summary Judgment

"56 (a) FOR CLAIMANT. ...

(b) FOR DEFENDING PARTY. A party

against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) - (g) ..."

Federal Rule of Civil Procedure 68

Offer of Judgment

"At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued..."

United States Constitution, Amendment Five

> "...nor shall any person...be deprived of ... property, without due process of law..."

STATMENT OF THE CASE

a) Procedural Errors

On May 7, 1970, Petitioner herein filed an action in propria persona in the United States District Court for the Northern District of California against Railway Express Agency, Inc., hereinafter referred to as REA. On July 24, 1970, a First Amended Complaint was filed by Petitioner's attorney which joined REA and American President Lines, Ltd., hereinafter referred to as APL, as defendants. This action was based on diversity jurisdiction with a claim in excess of $10,000, and arose under the Federal Carriage of Goods by Sea and Interstate Commerce Acts.

Responsive pleadings and normal discovery procedures followed and in August 1971, Plaintiff's Pretrial Statement was

filed. Each of the Defendants filed a Pretrial Statement in October 1971. On October 27, 1971, the court requested that Plaintiff and Defendants reach an Agreed Statement of Facts within three weeks. Lengthy informal conferences were scheduled and carried through by the Parties' attorneys. During the period Plaintiff, Samuel Schneideman, became dissatisfied with the representation provided by the law office which he had retained to handle this action.

By January 19, 1972, it had been mutually agreed between Mr. Schneideman and his counsel Mr. Conklin that Mr. Schneideman would be substituted in propria persona. On January 26, 1972, the court granted the Motion to Substitute Counsel and scheduled pre-trial for March 9, 1972 and a court trial on April 10, 1972.

Mr. Schneideman took over his own representation and on January 31, 1972, filed a Superseding Pre-Trial Statment. It alleged indisputable facts in that REA deviated from the contracted for mode of transportation, was making unlawful charges, and refused to conduct a thorough search for the Petitioner's missing property. REA did not answer these allegations.

On a Friday, March 9, 1972, the Court heard Defendant REA's oral motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. No notice of such motion had been served on Mr. Schneideman. The Court ordered him to show cause on the next Thursday, March 15, 1972, why said motion should not be granted. On March 15, 1972, despite Plaintiff's strenuous efforts to protect his causes of action and obtain a trial on the disputed facts which had been set forth by the Defendants themselves just five

months before, the motion for Summary Judgment was granted.

Defendant APL did not join in its Co-Defendant's motion. On March 3, 1972, APL had filed an Offer of Judgment which was accepted by Plaintiff. This acceptance resulted in a judgment being entered against APL on March 15 in the sum of Five Hundred Dollars ($500). On March 6, 1972, REA had also filed an Offer of Judgment which was still outstanding when its motion for Summary Judgment was granted on March 15, 1972.

Subsequently Plaintiff, Samuel Schneideman, continuing in propria persona, made every possible effort to have the Summary Judgment set aside both in the District Court and upon appeal to the United States Court of Appeal for the Ninth Circuit. All such efforts, to and including the petition for Re-Hearing,

have been unsuccessful.

After the denial of the petition for re-hearing Petitioner determined to again retain legal counsel for presentation of this legal injustice to the United States Supreme Court.

b) Underlying Litigation

On or about March 13, 1969, Petitioner, Samuel Schneideman doing business as ADEPTCO, entrusted a package containing a steel die to the Respondent REA. Said package was delivered by Petitioner to the San Francisco office of REA and there a contract was entered into whereby REA agreed to transport the packed die to Tokyo, Japan, for the sum of $27.06.

Subsequently REA utilized the services of APL for the shipment of the Petitioner's package. Several months later it was discovered by Petitioner that his package had never reached Japan.

On October 14, 1969, REA offered the sum of Fifty Dollars ($50) to Petitioner as and for full compensation for the loss of the die. Petitioner refused the offer. He had never in fact been informed of REA's self-imposed Fifty Dollar ($50) liability limit and had never been offered the opportunity to request additional insurance for his property. The only information provided by Petitioner regarding the value of the package was in response to REA's agent's inquiry regarding the value of the item "For Customs Only" and his estimate of Fifty Dollars ($50) was in fact placed in a column on the Order Bill of Lading labelled "for Customs Only." An adjacent column marked "For Carriage" had no entry whatsoever and no information regarding this matter was asked of Petitioner by REA's agent.

The actual value of the die, in the

forms of special, general and consequential damages to the Petitioner, Mr. Schneideman, is a disputed issue. It was in dispute when REA offered to settle this claim for Fifty Dollars ($50) and it continues to be a dispute between the parties.

It must certainly be acknowledged that under the Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-1315) and the Interstate Commerce Act (49 U.S.C. §§1-1022) the Petitioner has a cause of action upon which he may recover from REA if he is able to prove the above outlined facts to the Court. These facts are in dispute and Petitioner is anxious to be allowed an opportunity to have this dispute resolved by the judicial process.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW SO FAR SANCTIONED A DEPARTURE BY THE LOWER COURT FROM THE

ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

1. Summary Judgment cannot be granted in a case where there are admitted issues of material and genuine facts.

The record of this case reflects that on March 9, 1972, an oral motion for Summary Judgment was made by Respondent REA before Judge Robert H. Schnacke. An examination of the transcript of that day substantiates that in fact REA's counsel did not initiate the motion. The judge plainly suggested that a Motion for Summary Judgment was in his opinion appropriate. The argument of REA's counsel followed the judge's comments in the form of a single statement: "So made."

Evidence of REA's actual attitude towards the Petitioner's action exists in the Offer of Judgment under F.R.C.P. 68

for Five Hundred Dollars ($500). This was filed with the court just three days before the above described incident and it is impossible to imagine that a genuine change in REA's legal evaluation could have occurred during this period.

As previously mentioned the Pretrial Statements of all parties had been filed with the Court in October of 1971. At that time each Defendant included in its respective statement a lengthy section entitled "DISPUTED FACTUAL ISSUES." The full text of this portion of the two statements is set forth in Appendix C attached hereto. On January 31, 1972, a Superseding Pretrial Statement by Plaintiff was filed with the court.

REA's Statement indicated that the disputed factual issues included the question of REA's negligence. It further indicated that the loss had not occurred

while the die was in the custody of REA, while APL's statement indicated that the loss had not occurred while the die was in the custody of APL, although no other parties are known or alleged to have had custody of the package. Additionally REA alleges that even in the event that its liability was established it would be limited to Fifty Dollars ($50), and that it could not be liable for the actual value of the die nor for the Plaintiff's damage due to loss of use of the die. Each and every one of these issues was genuine and material. Additional issues of disputed fact are set forth in Plaintiff's Statement.

The decision to list these issues in the Statement of Disputed Facts was based upon the Respondent's discovery procedure during the prior year of litigation and upon the preparation for trial of a case

which it was anticipated would be tried within a few weeks. Subsequent to the Statements no further discovery was carried out to eliminate these disputes, and yet on March 9, 1972, the Defendant REA suddenly made its claim that, "...there is no genuine issue as to any material fact."

In 6 Moore's Federal Practice, §56.08 it is stated that, "A defending party who moves for Summary Judgment has the burden of clearly establishing his right thereto as a matter of law." In this case upon Defendant REA's oral motion, "So made," there was a failure to comply with this standard. The above described burden was not sustained by REA.

In the case of Dawn v. Sterling Drug, Inc., D.C. Cal. 1970, 319 F. Supp. 358, 361, the California Court reiterated the long time standard for granting Summary Judgments by stating, "Such a drastic

procedure should be used sparingly so that no plaintiff having a scintilla of merits to his cause should be denied his day in court." Mr. Schneideman's case had more than a scintilla of merit but he was denied his day in court by the Federal District Judge.

Petitioner herein urges that the granting of the Summary Judgment was done in spite of several viable and material factual disputes which were evident from the record. This improperly granted motion should and must be remedied by this Court if Mr. Schneideman is ever to have a trial and a legal determination of the liability of REA for its actions as are herein outlined.

2. The decision below violated the requirements of F.R.C.P. 56 and the most basic legal requirements regarding notice.

Under the current F.R.C.P. it is well recognized that the remedy of Summary Judgment, as set forth in Rule 56, is available

to dispose of actions where, "...there is no genuine issue as to any material fact ..." In this case for reasons which are not reflected in the pleadings on file with the District Court, such a motion was orally made on March 9, 1972, by REA. No Notice of Motion was filed with the Court before that date.

There was blatant noncompliance with F.R.C.P. 56 (c) which requires that, "The Motion shall be served at least 10 days before the time fixed for hearing." No motion for the relief of Summary Judgment was communicated to Mr. Schneideman, either in written or oral form prior to March 9, 1972. It should be remembered that during this period Mr. Schneideman was appearing on his own behalf as counsel of record.

As a person without formal legal training who had spent most of his life in his native Great Britain it should be

apparent that denying him formal and specific notice of this highly technical motion, which he had never encountered before in his life, was an extreme infringement of his rights both as the Plaintiff and as the counsel of record. The issue of what constitutes proper notice of this motion was considered recently by a Federal Court in Hudson v. Hardy, 1968, 412 F2d 1091, 134 U.S. App. D.C. 44. In that instance an action had been brought in propria persona for declaratory relief and upon the Defendants' Motion for Summary Judgment, which was even written and supported by affidavits, the action was dismissed. The Court of Appeals reversed this disposition and stated, "We stress the need for a form of notice sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required." Hudson

was an action brought by a prisoner, but it would seem that the protection it requires must be afforded to all who seek justice on their own behalf in our courts. This protection was not afforded to Mr. Schneideman who was not even provided with written materials of defendants which had been served upon the prisoner Hudson.

An examination of the docket entries for District Court Case C-70-967 confirms that no pleadings either in form of Supporting Affidavits or Notice of Motion was filed by REA which was the "moving party" on March 9, 1972. On can also note a conspicuous absence of any Proof of Service for the motion. It is completely evident from the pleadings therein that the oral requests for relief on March 9, 1972, was the first and only notice offered to Mr. Schneideman of REA's motion.

In response to this motion the Court ordered that Mr. Schneideman would have to Show Cause why the motion for Summary Judgment should not be granted. Furthermore he was required to make such a showing on March 15, 1972. This allowed Mr. Schneideman only four court days for preparation. This is totally in violation of the regulations set forth in Rule 56 where 10 days at a minimum are required.

The entire procedure was highly improper and illegal. It in no way reflected the spirit or letter of the Rules of Civil Procedure nor the fundamental requirements of notice. Basic to our system of justice in all areas of the law is the necessity that parties in legal proceedings should have notice of all proceedings so that the grounds for such proceedings can be communicated to the opposition and so that they may be

accorded fair and sufficient time for preparation of evidence and legal argument.

It must be apparent to this Court that Mr. Schneideman was prejudiced in a manner which was both illegal and obviously unfair. Had a member of the bar been ordered to comply with such an illegal time requirement he would have been within his rights to refuse to submit to the order and such refusal would have clearly been upheld upon review.

Mr. Schneideman in fact has been deprived of his cause of action against REA and as it is a type of property he has been denied the rights guaranteed by the Fifth Amendment of the United States Constitution. He has been deprived of property in a matter which by any standard must be considered to be without "...due process of law..."

This impropriety should have been sufficient to justify reversal of the Summary Judgment by the Court of Appeals, but when Mr. Schneideman presented his case to them an affirmation occurred. Now it is entirely up to this Court to determine whether in fact this Petitioner will ever be allowed the day in Court to which he was originally entitled. That trial right was denied him, just one month before the April 10, 1972 Court Trial which had been scheduled on January 26, 1972, before the Motion for Summary Judgment was ever considered by REA.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgment of the Court of Appeals for the Ninth Circuit. In the alternative, Petitioner respectfully suggests that the Court may wish to vacate the judgment be-

below and remand this case for further proceedings or order a summary reversal of of the judgment heretofore entered by the Court of Appeals in this matter.

Respectfully submitted,

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Counsel for Petitioner

GINGER L. C. GOULD
2034 Blake Street
Berkeley, California
Of Counsel

February 1, 1974.

.....

.....

APPENDIX A

JUDGMENT OF
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
No. C.70-967 RHS
(NO OPINION ENTERED)

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The motion for Summary Judgment made on behalf of the defendant, RAILWAY EXPRESS AGENCY, INC., is granted, and the complaint and amended complaint filed by SAMUEL SCHNEIDEMAN, dba ADEPTCO, plaintiff, is dismissed as against RAILWAY EXPRESS AGENCY, INC.

2. The cross-complaint filed on behalf of RAILWAY EXPRESS AGENCY, INC. against AMERICAN PRESIDENT LINES, a corporation, is dismissed without prejudice.

3. Costs are awarded in favor of Defendant, RAILWAY EXPRESS AGENCY, INC., as against Plaintiff.

DATED: May 23, 1972.

(signed)
ROBERT H. SCHNACKE
UNITED STATES DISTRICT JUDGE

ENTERED: May 25, 1972--Docket Number 76

APPENDIX B

MEMORANDUM OF
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Number 72 - 1859

(October 15, 1973)
Appeal from the United States District Court for the Northern District of California

Before: DUNIWAY, HUFSTEDLER and WALLACE, Circuit Judges

MEMORANDUM

In his amended complaint, Schneideman sued Railway Express Agency, Inc. (REA) and American President Lines, Ltd. (APL) for nondelivery of a steel die which was to be shipped to Japan. REA cross-claimed against APL for indemnity. APL settled with Schneideman and was dismissed from the complaint. The district court entered summary judgment in favor of REA and dismissed the cross-claim against APL without prejudice. Schneideman appeals and we affirm.

Schneideman (in pro per) raises many issues but we comment only on those deserving attention. He incorrectly contends that REA must be responsible for the loss due to the provisions of 49 U.S.C. Section 20(11). That statute applies only to shipments between the United States and an adjacent foreign country. Clearly Japan does not qualify as an "adjacent" country within the meaning of this statute.

Additionally, Schneideman's reliance upon the Carriage of Goods by Sea Act, 46 U.S.C. Sections 1300-15, is misplaced. Under that statute, the carrier is liable for the full value of misplaced or destroyed freight within its possession only if the value of the freight has been declared prior to shipment and inserted in the bill of lading. If the value has not

been declared by the shipper and inserted in the bill of lading, the carrier's liability is limited to $500 per package. 46 U.S.C. Section 1304(5). In the instant case, Schneideman declared the value of the contents to be no more than $50 and REA has made a proper tender to him.

There was no triable issue of fact properly before the court and summary judgment was appropriate.

APPENDIX C

PRETRIAL STATEMENT OF DEFENDANT, REA

4. Disputed Factual Issues

Plaintiff alleges that plaintiff was damaged by reason of the negligence of defendants REA and APL and by reason of the unseaworthiness of the SS PRESIDENT VAN BUREN and that the value of his lost Steel Die is Seven Thousand Dollars ($7,000.00). Furthermore, plaintiff alleges further damages for the reasonable value for the use of said Steel Die at Two Thousand Dollars ($2,000.00), per month, for a reasonable period of time. Cross-complainant REA alleges that if it were liable to plaintiff, it would be entitled to indemnity and reimbursement from cross-defendant APL for the full amount of any such liability.

Defendant REA denies the above allegations of plaintiff, and denies that it was negligent or that plaintiff has sustained any damages and alleges that the alleged loss of the Steel Die did not occur while it was in the custody of REA, and that REA is not liable for the loss of

the Steel Die, since the loss, if it occurred, occurred in the possession of APL.

REA further alleges, if there is liability to it, that it would be entitled to indemnity and reimbursement from cross-defendant APL, for the full amount of any such liability.

Defendant REA denies the alleged damages of plaintiff, and denies that it would be liable, if liability is found as against it, for any amount in excess of Fifty Dollars ($50.00).

In addition to the foregoing, REA alleges that there are further defenses on points of law which are set forth below.

PRETRIAL STATEMENT OF DEFENDANT, APL

4. Disputed Factual Issues

Plaintiff alleges that plaintiff was damaged by reason of the negligence of defendants, Railway Express Agency and American President Lines and by reason of the unseaworthiness of the SS PRESIDENT VAN BUREN and that the value of his lost Steel Die is Seven Thousand Dollars ($7,000). Furthermore, plaintiff alleges further damages for the reasonable value for the use of said Steel Die at Two Thousand Dollars ($2,000) per month for a reasonable period of time. Cross-complainant, Railway Express Agency alleges that if it is liable to plaintiff, it would be entitled to indemnity and reimbursement from cross-defendant, American President Lines for the full amount of any such liability.

Defendant and cross-defendant, American President Lines denies the above

allegations of plaintiff and cross-complainant, Railway Express Agency and denies that it was negligent or that the SS PRESIDENT VAN BUREN was unseaworthy or that plaintiff has sustained any damages and alleges that the alleged loss of the Steel Die did not occur while it was in the custody of American President Lines, and further alleges that, if the loss of the Steel Die occurred while it was in American President Lines' custody, which is expressly denied, said loss and damage arose and resulted from the causes set forth in 46 U.S.C. § 1304(2) and (3) and accordingly, American President Lines is not liable. In addition to the foregoing, American President Lines alleges that there are further defenses on points of law which are set forth below.

SUPERSEDING PRETRIAL STATEMENT BY PLAINTIFF

IV. Disputed Factual Issues

The considerations of:

Whether REA was the through responsible carrier, and not merely an agent for the shipper, whose, REA's, liability was discharged by a validated receipt aboard another carrier's vehicle of transportation.

Whether REA had a right to impose on the shipper in the event of a shipment not turning out, being landed, at any destination point of links in the chain of transportation of it, an assumption in effect that his shipment is missing in the absolute sense rather than missing in the mislaid sense, and a requirement of him to execute and file with it its printed form of claim which operates as an assignment

in claim for consideration, with REA's refusal otherwise or anyway not to carry out endeavor to locate the missing shipment, but with the shipper having complied, then for REA simply to assume that it is finally missing, and a subject thereafter for assessment or ignoring of claim.

Whether REA had any right to deny and/or delay a duty by it to the shipper of its checking the shipment through transportation links and, in the event of it being missing or mislaid, making a thorough search and inquiry to locate it and/or give account to the shipper, of how come finally that it is unrecoverably missing, as quickly as reasonably possible.

Whether it was the duty of both of the common carriers herein in accepting the shipment, to require papers of value of the shipment, such as an invoice or other statement in writing, executed by the shipper, and to charge for and assume liability accordingly. Whether the carriers could or couldn't evade their fully-responsible basic liability under the Acts by making their own summary assumptions of value of a shipment, in which they would execute express receipts and bills of lading, whether or not in all circumstances served upon the shipper in good time or at all, having on them small-printed and abstruse conditions. Or in the case of carriers of goods by sea, summarily imposing by the Act a non-contracted limit assumed in the Act by the mere fact of a shipment having been entered for shipment by sea, of the carrier's liability to $500.00, and assuming a prejudice of the shipper's title in his property to this limitation on nothing more than the shipment's commitment to them by the initial carrier with the initial carrier's own statement of it only, as would catch the shipper by remissness of invoice

or other written statement.

Whether REA, a Freight Forwarder governed by U.S.C. Title 49, using the transportation link of APL which is governed by U.S.C. Titles 49 and 46, thereby commits its shipper to the limitations and conditions of Title 46 Carriage of Goods By Sea Act without serving on the shipper a bill of lading stating said Act, absolving REA from greater commitment and nullifying or subordinating its liability to the shipper under Title 49 which ordinarily makes REA liable to the shipper in the full value of the shipment unless REA has obtained a release for a limited liability in negligence from the shipper for fair consideration in low or lower rate of charges. And whether REA had no duty to apprise the shipper of the risk prejudical (sic) to his title of value in the property of shipment by the conditions of the Carriage of Goods By Sea Act without making specific provisions in it.

Whether the shipper had the responsibility to thrust upon the initial carrier his papers of value, or be liable to prejudice of his value title in the property of shipment by not doing so; and whether it was not the carrier's risk in not exacting according to and getting the statement or invoice from him.

Whether REA had a right to assume absolute title in a release (if it were effective and not a would-be release) for limited liability, such as would entitle it to do as it pleased with the property, with it becoming in effect a purchaser for the sum of not more than the release limit; absolving it from all contract in conditions and mode of shipment, such as

containerization.

Whether REA was lawful in its charges to plaintiff in the shipment herein.

Whether REA's charges as filed with the Commission were in this shipment based on a release value of $50.00 in agreement with such filed schedule.

Whether REA was lawfully in compliance in its charges for the shipment herein, with the requirements of the Acts to file a schedule of such with the Commission and make them noticed, posted and readily available to shippers, and to charge only as defined in such a schedule applicable to the date of shipment.

Whether, if REA's charges were based on a release value of $50.00 in agreement with its complied filing of an appropriate schedule, such charges were excessive and did not constitute a fair concession for a low-liability release as required by the Act. And whether plaintiff knowingly agreed to such release.

Whether REA had a duty to advise plaintiff promptly that his shipment had not arrived at its destination.

Whether REA was liable for deviation in not containerizing the shipment. "

APPENDIX D

Transcript of March 9, 1972

Clerk: Civil 70-967, Schneideman v. Railway Express Agency, Inc., pretrial conference and motion for costs.

Mr. Schneideman: Samuel Schneideman for plaintiff.

Mr. Garfinkle: Eugene Garfinkle, representing the Railway Express Agency.

Mr. Seymour: James Seymour, representing American President Lines.

The Court: I have examined the record in this matter, together with the offer of judgment that has been advanced by American President Lines, and it appears to me that this matter is probably ripe for motion for summary judgment. And if those motions are made, I will issue an order at this time to Mr. Schneideman to show cause why summary judgment in favor of Railway Express Agency against Mr. Schneideman and in favor of Mr. Schneideman against American President Lines in the amount of $500 should not be entered. How long would you need Mr. Schneideman to show cause in that respect?

Mr. Schneideman: About six weeks, your Honor. I have already accepted American President Lines' offer of judgment.

The Court: I take it such a motion is made on behalf of Railway Express and American President Lines?

Mr. Seymour: Well, inasmuch as the offer has been accepted, judgment can be entered against APL on those terms, and the acceptance of the offer.

Mr. Garfinkle: On the record, your Honor, there is no question but that the Railway Express Agency has paid $50 to Mr. Schneideman in the form of a check, which represents the insurance that Mr. Schneideman had.

Mr. Schneideman: But I haven't accepted.

Mr. Garfinkle: Which check hasn't been cashed. He does have in his possession $50 which represents the insurance.

The Court: Maybe you can bring another action to get that back, but there is no claim made for that.

Mr. Garfinkle: The Railway Express Agency would waive claim to that.

The Court: ... (Indication for Motion for summary judgment)

Mr. Garfinkle: So made, your Honor.

The Court: I will shorten time in connection with the order to show cause. It will be heard on ---

Mr. Schneideman: I would like time to engage counsel on this.

The Court: No, Mr. Schneideman, you have had counsel in and out of this case so many times; every time it appears that the matter is about to be disposed of you either discharge your counsel or suggest that you now engage counsel.

Mr. Schneideman: I have only had one counsel.

The Court: You have urged upon the Court heretofore that you are competent to handle this matter and have supplied the Court with --

Mr. Schneideman: It seems to me a lot of prejudice --

The Court: There is an adequate amount of literature to indicate the extent of your competency. We will hear the matter on

March 15.

Mr. Schneideman: To short a time, your Honor. I think I should have some right of appeal against the whole thing.

The Court: Mr. Schneideman, we will hear the matter on March 15 at 9:30. At that time, in the event the matter is disposed of on summary judgment, you will then have the opportunity to appeal in a nice, clear, cleancut form so that --

Mr. Schneideman: Nothing prejudiced?

The Court: You are in no way prejudiced against appeal if there should be an order granting the motions for summary judgment.

We will continue the matter with the understanding that Mr. Schneideman is at this time being ordered to show cause by 9:30 on March 15 why the motions for summary judgment in the fashion I have heretofore indicated should not be granted.

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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1974

NO. 73-1195

SAMUEL SCHNEIDEMAN, doing business as
ADEPTCO, Petitioner,

v.

RAILWAY EXPRESS AGENCY, INC.,
a corporation;
AMERICAN PRESIDENT LINES, LTD.,
a corporation, Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT RAILWAY EXPRESS AGENCY IN OPPOSITION

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March 4, 1974

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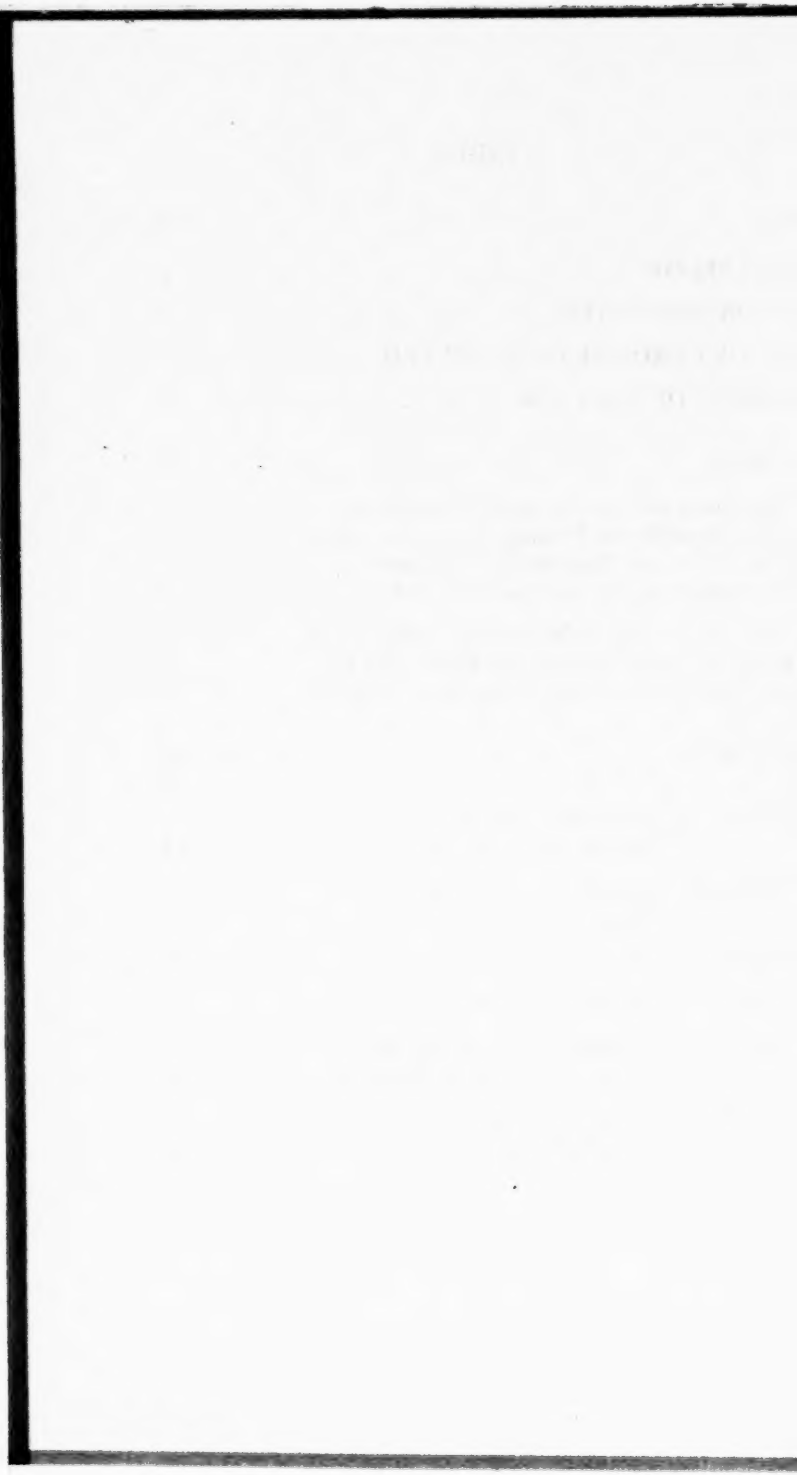

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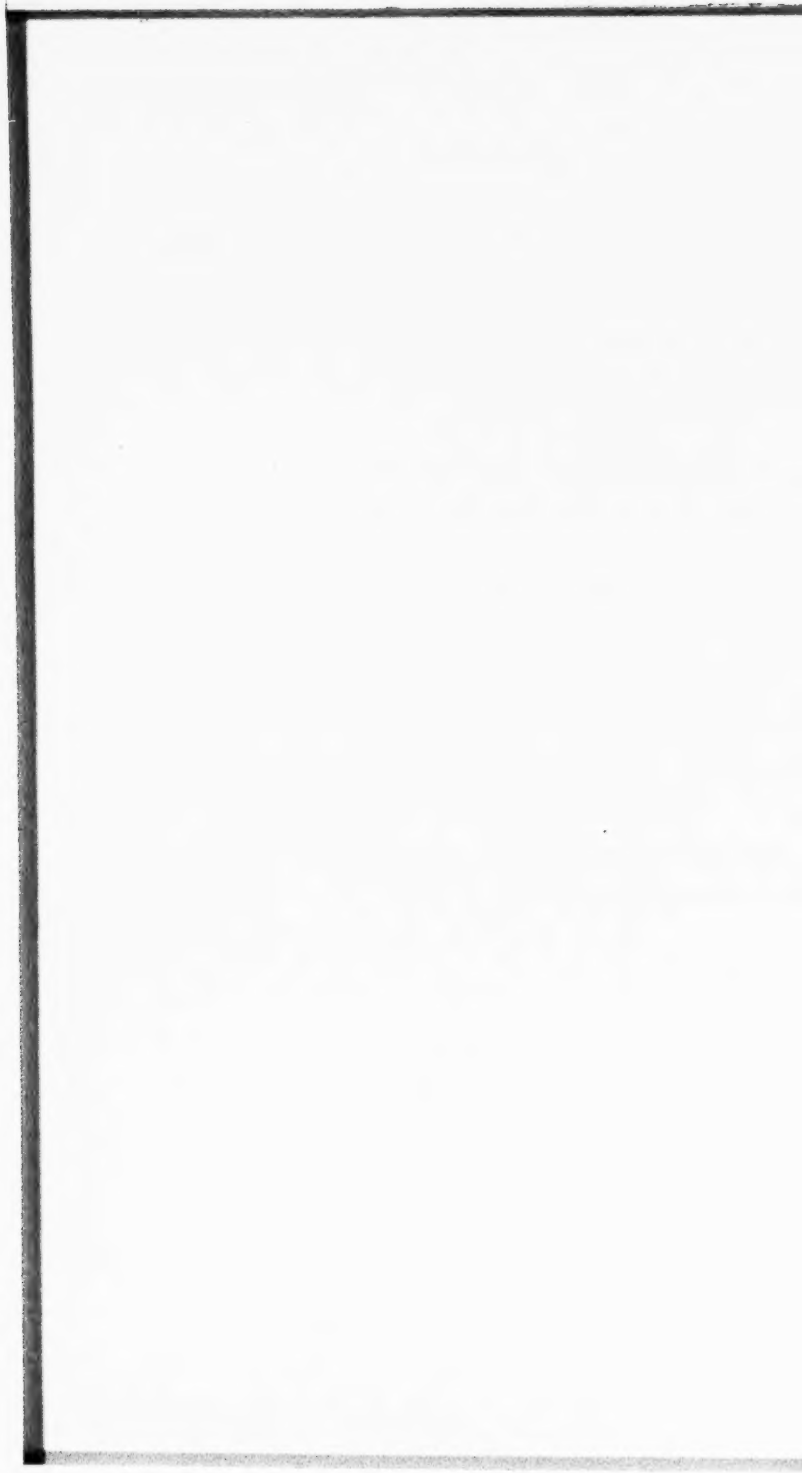


IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1974

NO. 73-1195

SAMUEL SCHNEIDEMAN, doing business as ADEPTCO,

Petitioner,

v.

RAILWAY EXPRESS AGENCY, INC., a corporation;
AMERICAN PRESIDENT LINES, LTD., a corporation,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT RAILWAY EXPRESS AGENCY IN OPPOSITION

OPINION BELOW

No reported opinion was rendered by the District Court for the Northern District of California or by the Ninth Circuit Court of Appeals. The District Court's judgment appears in Appendix B attached hereto, and the Memorandum entered by the Court of Appeals appears in Appendix B of the Petition.

QUESTION PRESENTED

Has the United States Court of Appeals for the Ninth Circuit sanctioned such a departure from the accepted and usual course of judicial proceedings by the United States District Court for the Northern District of California so as to call for an exercise of this Court's power of supervision, by upholding the District Court's summary judgment in favor of REA and against Petitioner and in the process:

1. Agreeing with the finding that no genuine issue as to any material fact existed for determination by the District Court; and

2. Not finding that Petitioner was grossly prejudiced by the notice given him by the District Court.

STATUTORY PROVISION INVOLVED

The pertinent provisions of Federal Rule of Civil Procedure 56 are set forth in the Petition at pp. 3-4.

STATEMENT OF THE CASE

On March 13, 1969, at San Francisco, California the Petitioner delivered one (1) carton weighing forty-one (41) pounds, to Respondent RAILWAY EXPRESS AGENCY, hereinafter referred to as "REA," for shipment to Tokyo, Japan. At that time Petitioner received from REA a Uniform Express Receipt No. P001980 (non-negotiable), dated March 13, 1969, and this receipt had printed on it:

> "Note--The Company will not pay over $50.00 in case of loss, or $.50 per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared and charges for a greater value paid."

This receipt also had a declared value of $50.00 typed on it and the printed matter on the receipt also stated:

> "Value herein declared by Shipper (ADEPTCO) (fictitious name of Petitioner) to be that entered in space hereon reading 'Declared Value'".

Subsequently, the Petitioner received REA Uniform Through Export Bill of Lading B/L No. 697174, dated March 13, 1969, which had spaces for entry of "Shipper's Declared Value in U.S. Dollars" at two (2) locations. One of the spaces was marked "For Customs Only" and this space contained an entry of $50.00 and the other space marked "For Carriage" was left blank. There was also an entry made to the effect that the shipper requested Maritime Insurance in the amount of $50.00.

The REA Bill of Lading No. 697174 contained the printed matter set forth in Appendix A attached hereto.

All of the charges made by REA for transportation (land and ocean) and handling were based on the declared value of $50.00.

On March 19, 1969, the carton was delivered by REA to American President Lines (hereinafter "APL") for ocean carriage from San Francisco to Yokahama, Japan. APL received said carton and issued its Bill of Lading No. 0537 to REA, naming REA as shipper for carriage of the carton on the S.S. President Van Buren, "as agents for shipper." REA was also named as Forwarding Agent in said Bill of Lading.

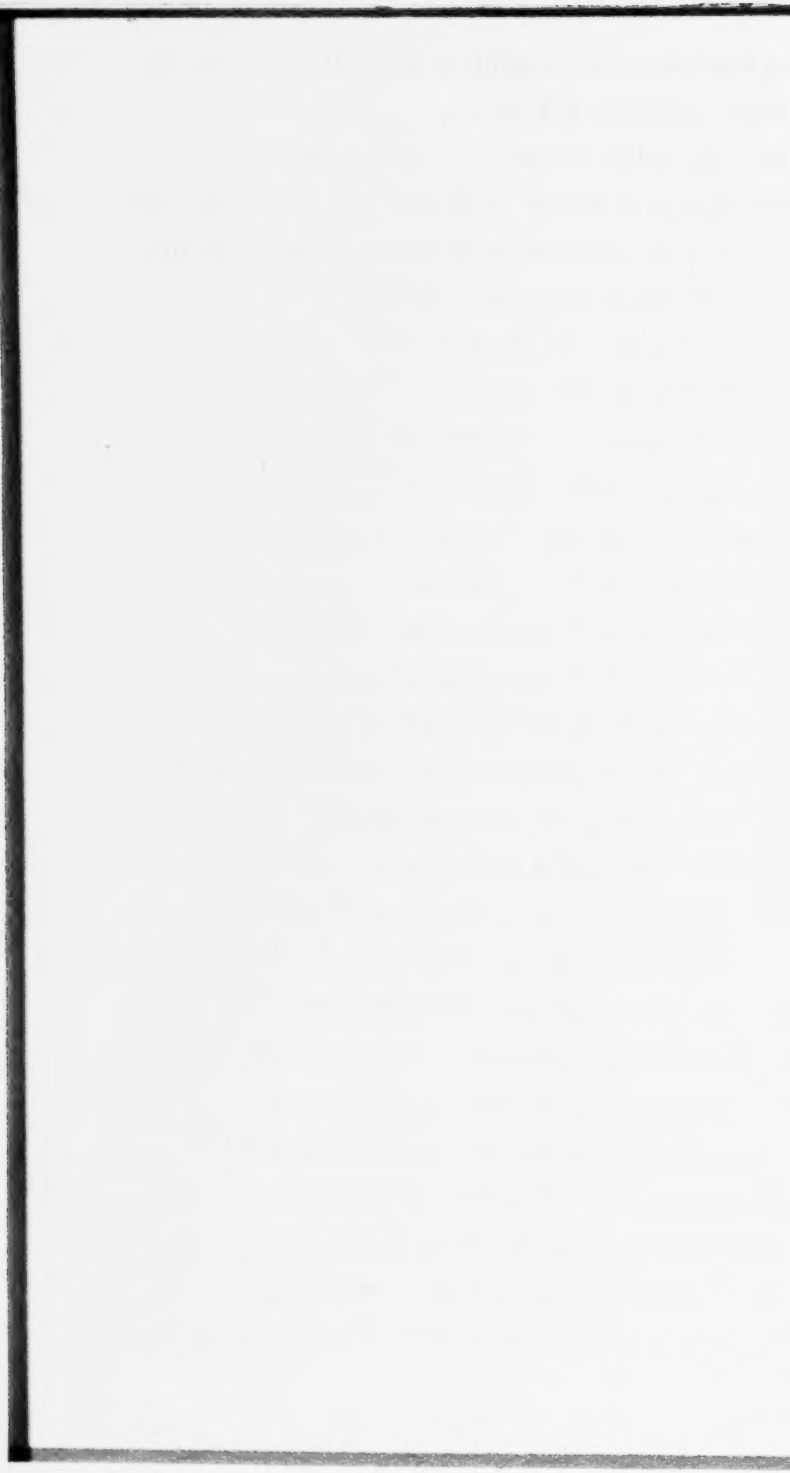
APL's Bill of Lading No. 0537 contained a typed entry stating "NO EXPORT DECS. VALIDATION REQUIRED VALUE $50.00." The Bill of Lading also contained language pursuant to the Carriage of Goods by Sea Act (46 U.S.C. Section 1300-1315)

limiting Respondent APL's liability to $500.00 per package unless a higher valuation was declared.

APL collected its transportation charges based upon the declared valuation of $50.00. At no time prior to making a claim for recovery of the carton did the Petitioner declare a valuation higher than $50.00 to either APL or REA.

The S.S. President Van Buren arrived in Yokahama, Japan, on April 27, 1969, but the carton was not delivered to the designated receiver. On October 14, 1969, REA delivered to Petitioner a draft in the sum of $50.00 as full payment for the loss suffered by Petitioner. Formal claim was filed by Petitioner as against REA on December 15, 1969. This claim, except for the payment of the $50.00 as set forth above, was denied.

On May 7, 1970, Petitioner filed a complaint in the District Court for the Northern District of California naming REA as Defendant. The complaint was subsequently dismissed by order of the court and a first amended complaint was filed on July 24, 1970, naming REA and APL as Defendants. REA subsequently answered and filed a cross claim in indemnity against APL. A pretrial conference was scheduled for October 27, 1971, and all parties presented pretrial statements. All parties attended the scheduled pretrial conference but were unable to reach an accord on an agreed statement of facts, and subsequently, the court rescheduled the pretrial conference for March 9, 1972, and scheduled a court trial for April 10, 1972. Petitioner filed a "Superseding Pretrial Statement" on January 31, 1972, and a pleading entitled "Joinder of Claim by Plaintiff Against Defendant, RAILWAY EXPRESS AGENCY' INC.' (REA) for Tort."



This motion also was scheduled for hearing on March 9, 1972. On March 3, 1972, APL filed an Offer of Judgment which was accepted by Petitioner and a judgment was entered against APL on March 15, 1972, in the amount of $500.00.

On March 9, 1972, in open court, at a combined hearing of the scheduled pretrial conference and the motion of joinder, referred to above, REA made an oral motion for summary judgment. (Appendix D pp. 33 of the Petition). At that time, the court ordered the Petitioner, who was present in the courtroom, to show cause on March 15, 1972, why said motion for summary judgment should not be granted.

After the hearing of March 9 and prior to the hearing on March 15, 1972, the Petitioner filed the following pleadings in response to the order to show cause:

1. "Response To Order To Show Cause Against Summary Judgment Trial" filed March 10, 1972;

2. "Affidavit By Plaintiff In Re Oral Order Of The Court, March 9, 1972" filed March 13, 1972;

3. "Request Mandamus By Plaintiff Upon The Judge By 28 U.S.C. Section 1361 Accord" filed March 13, 1972;

4. "Certificate of Samuel Schneideman" filed March 13, 1972.

On March 15, 1971, at the time of hearing, and all parties being in court, the court first found that based upon Petitioner's own statement of evidence contained in his "Superseding Pretrial Statement", there were no evidence to establish liability on the part of REA as against Petitioner, and then the court granted

REA's motion for summary judgment. On May 25, 1972, the court entered the judgment, a copy of which is reproduced in its complete form in Appendix B hereto. The court further by Order dated and filed May 23, 1972, disposed of all matters pending before the court. A copy of this Order is reproduced in Appendix C hereto. Notice of the granting of this Order was given to Petitioner on May 31, 1972, and this notice is reproduced in Appendix D hereto.

Petitioner sought to have the District Court review its order granting the summary judgment by the filing of various pleadings rearguing his case. Finally he filed his appeal with the United States Court of Appeals for the Ninth Circuit, filed briefs and various other pleadings, and after the Court of Appeals upheld the District Court's action, filed this Petition for Writ of Certiorari. In all, after the hearings of March 15, 1972 and the granting of the motion for summary judgment, Petitioner filed 14 pleadings either before the District Court or the Court of Appeals not related to his appeal. In addition he filed briefs before the Court of Appeals and a Petition for Reconsideration.

The documents and pleadings argued every detail of his case on the merits and his alleged prejudice by the manner in which the District Court granted the Summary Judgment. No stone was left unturned by Petitioner. A chronological list of the pleadings and documents filed by Petitioner from March 15, 1972 to the filing of the Petition for Certiorari is set forth, in brief, in Appendix E attached hereto.

The decision of the Court of Appeals is reproduced in Appendix B of Petition pp. 25-26. The Court of Appeals, after

a review of all documents and records before it concluded in its memorandum opinion that "[t]here was no triable issue of fact properly before the court and summary judgment was appropriate." Circuit Judges Duniway, Hufstedler and Wallace were unanimous in this decision.

After his Petition for Reconsideration was rejected, Petitioner filed this Petition for Writ of Certiorari, a copy of said Petition having been received by counsel for REA on February 4, 1974.

ARGUMENT

I

THE COURT OF APPEALS ACTED PROPERLY IN AGREEING WITH THE FINDING THAT NO GENUINE ISSUE AS TO ANY MATERIAL FACT EXISTED FOR DETERMINATION BY THE DISTRICT COURT.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." U.S. Sup. Ct. Rule 19(1).

No such reasons have been shown by Petitioner and none exist. Petitioner alleges as his only ground for review on writ of certiorari that the decision of Court of Appeals in upholding the District Court's Summary Judgment is conduct justifying this Court's intervention under the following language of U.S. Supreme Court Rule 19 (l)(b)

" . . . or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a

departure by a lower court, as to call for an exercise of this Court's power of supervision."

It is obvious from a review of the record filed herein that the Court of Appeals followed the usual and accepted procedure in upholding the District Court's judgment. The District Court had before it at the time it granted REA's motion for summary judgment, the following:

1. All pleadings including Petitioner's "Superseding Pre-Trial Statement by Plaintiff" to which the court specifically referred in its comments prior to granting the motion for summary judgment.

2. Pertinent shipping documents attached to REA's and APL's Answers as follows:

a. REA Express Receipt No. POO1980 referred to above in the Statement of Facts;

b. REA Bill of Lading No. 697174 referred to above in the Statement of Facts;

c. APL Bill of Lading No. 0537 referred to above in the Statement of Facts.

3. All filings made by Petitioner and referred to hereinabove.

After granting the judgment the District Court reviewed all of the varied documents filed therein. Petitioner reargued his case (Appendix E) and the court upheld its decision. It determined no genuine issue of any material fact existed.

On appeal, the Court of Appeals had before it the complete record of the case. It also had Petitioner's briefs and all of the varied pleadings filed by Petitioner. (Appendix E)

After reviewing the whole case and all pleadings and documents the Court of Appeals upheld the District Court's judgment. Thereafter, Petitioner filed a Petition for Reconsideration and other documents rearguing his case and their decision was upheld. Petitioner obviously disagrees with the judgments of the District Court and the Court of Appeals, but Petitioner has not shown such a departure from the "accepted and usual course of judicial proceedings" so as to call for the intervention of this Court. In making its determination, the Court of Appeals clearly followed precedent.

Though an appellate court on review of a summary judgment, should not look the other way to ignore the existence of genuine issues of material fact, it is not in the best interests of judicial administration, to strain to find the existence of such genuine issues where none exist. Kirk v. Home Indemnity Co., 7th Cir. Ill. 1970, 431 F. 2d 554, 560.

Not every issue of fact, however genuine, precludes entry of summary judgment, and it is only a genuine issue of material fact which may have that effect. U.S. v. One Device, More or Less, E.D. Pa. 1963, 224 F. Supp. 265.

It is submitted that summary judgment was properly granted. Poller v. CBS Inc., 368 U.S. 464, 7 L.Ed. 2d 458, 82 S. Ct. 486 (1962).

The Petitioner points to the Pretrial Statements attached to his petition (Appendix C pp. 26-28) and argues that the Court of Appeals must have acted improperly since the statements set out the facts which are in dispute. The Pretrial

Statement of REA merely acknowledges that the Petitioner had made certain contentions which were denied by REA. A pre-trial statement cannot be interpreted as any indication that the contentions therein raise genuine material issues of fact. This is for a court to determine in normal course by a pretrial order or as the District Court did in this case by its judgment.

The assertion by the Petitioner that REA's Offer of Judgment may be taken as evidence of liability on its part, is patently erroneous. First of all, the offer being part of settlement negotiations is not properly admissible as evidence; and secondly, a minimal offer in a case where legal expenses had already run several times the amount offered, can hardly be termed an acknowledgement of liability on behalf of REA.

It is submitted that the Court of Appeals acted well within the accepted and usual course of judicial proceedings in affirming the District Court's finding that no triable issue of fact was before it.

II

THE COURT OF APPEALS ACTED PROPERLY IN NOT FINDING THAT PETITIONER WAS PREJUDICED BY THE NOTICE GIVEN HIM BY THE DISTRICT COURT.

Petitioner contends that gross procedural error such as to call for the intervention of this Court was committed by the District Court in that proper notice was not given. The alleged procedural error is in not strictly following the notice requirements of Rule 56 of the Federal Rules of Civil Procedure.

To satisfy the requirements of due process, notice must be of such a nature as to reasonably convey the required information and it must afford a reasonable time for those interested to make an appearance. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306,70 S. Ct. 652, 94 L.Ed. 2d 865. Here the notice given to the Petitioner was better calculated to inform the Petitioner than the written notice called for under Rule 56 (b). Because of Petitioner's physical presence in the courtroom, none of the uncertainties and delays associated with mailed notice could occur.

As to the question of whether the Petitioner had adequate opportunity to respond, it is clear that Petitioner understood what was required of him, and he in fact presented to the court a full and complete argument of his position (see documents filed between March 9 and March 15, 1972 - Statement of facts.) A review of the documents filed after the granting of the motion, will show several further complete presentations of Petitioner's views to the District Court. (See Appendix E). His position was also fully presented to the Court of Appeals on several occasions as can be readily seen from a review of documents filed with that court (Appendix E). For all of Petitioner's rhetoric, he has failed to show that he was prejudiced by the notice given or that it was an abuse of discretion for the District Court to follow the procedure it did. At best, the asserted procedural change was merely a technical variation of the Rules of Civil Procedure. The action of the Court of Appeals in approving the District Court's procedure cannot be such as to call for this Court's intervention under the circumstances presented.

Petitioner initially chose to act in propria persona, then hired respected counsel who represented Petitioner from at least July 24, 1970, until January 19, 1972. From that date, Petitioner again voluntarily chose to act in propria persona. He presented his case to both the District Court and the Court of Appeals with great vigor and in volume. To now argue he was prejudiced by his voluntary action in choosing not to have an attorney at all stages of this proceeding, is unfair to the courts and Respondent, all of whom patiently considered and replied to his arguments and filings. It would appear that Petitioner has more than adequately stated and presented his case.

CONCLUSION

It is respectfully submitted that the essence of Petitioner's Petition for a Writ of Certiorari is that the lower courts have erred and he seeks by this Petition to have yet another review on appeal of his case. This court has consistently refused to undertake such a course of action. U.S. v. Johnston, 268 U.S. 220, 45 S. Ct. 496, 69 L. Ed. 925.

For the reasons stated above, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

March 4, 1974

Respectfully submitted

James H. Boland
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Railway Express Agency, Inc.

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Of Counsel

APPENDIX A

REA BILL OF LADING NO. 697174

The face of REA B/L No. 697174 contained the following printed matter:

"ATTENTION OF SHIPPER.

The terms and conditions of the Order Bill of Lading under which this shipment is accepted are printed on the back hereof."

Clause 2 on the back of REA B/L No. 697174 stated:

"2. in consideration of the rate charged for carrying the property described in this bill of lading, which is dependent upon the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees that the express company shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual weight, for any shipment weighing more than 100 pounds, unless a greater value is stated herein. Unless a greater value is declared and stated herein the shipper agrees that the value of the shipment is as last above set out and that the liability of the express company shall in no event exceed such value. This provision, however, shall not preclude the shipper from declaring the true value of the property or contents of the shipment and in such event the tariff charges shall be computed on the basis of said declaration of actual value and the liability of the express company shall not exceed such actual declared value."

APPENDIX B

JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA No. C. 70-967 RHS

This matter came before this Court on March 15, 1972, Plaintiff, SAMUEL SCHNEIDEMAN, dba ADEPTCO, appearing in pro per, RAILWAY EXPRESS AGENCY, INC., a corporation, appearing by DREHER, DREHER & GARFINKLE, and Eugene Garfinkle, Esq., its attorneys, and AMERICAN PRESIDENT LINES, a corporation, appearing by James H. Seymour, Esq., its attorney, and a motion for summary judgment having been made by RAILWAY EXPRESS AGENCY, INC., by Eugene Garfinkle, and the motion for summary judgment in the entitled matter being properly before this Court, and good cause appearing therefor, based on the pleadings, files and records before this Court:

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The motion for summary judgment made on behalf of the defendant, RAILWAY EXPRESS AGENCY, INC., is granted, and the complaint and amended complaint filed by SAMUEL SCHNEIDEMAN, dba ADEPTCO, plaintiff, is dismissed as against RAILWAY EXPRESS AGENCY, INC.

2. The cross-complaint filed on behalf of RAILWAY EXPRESS AGENCY, INC. against AMERICAN PRESIDENT LINES, a corporation, is dismissed without prejudice.

3. Costs are awarded in the favor of Defendant, RAILWAY EXPRESS AGENCY, INC., as against Plaintiff.

DATED: May 23, 1972.

(signed) ROBERT H. SCHNACKE
United States District Judge

Entered: May 25, 1972 -- Docket Number 76

APPENDIX C

ORDER OF UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
No. C. 70-967 RHS

This matter came before this Court on May 17, 1972, Plaintiff, SAMUEL SCHNEIDEMAN, dba ADEPTCO, appearing in pro per, RAILWAY EXPRESS AGENCY. INC., a corporation, appearing by DREHER, DREHER & GARFINKLE, and Eugene Garfinkle, Esq., its attorneys, and AMERICAN PRESIDENT LINES, a corporation, appearing by James H. Seymour, Esq., its attorney, and the Court having considered the following motions made by Plaintiff and presently pending before this Court:

1. Motion for New Trial;
2. Amendment to the Court's Findings;
3. Amendment to the Judgment;
4. Joinder of Claim by Plaintiff against Defendant, RAILWAY EXPRESS AGENCY, INC. (REA) for Tort;
5. Motion for Change of Venue.

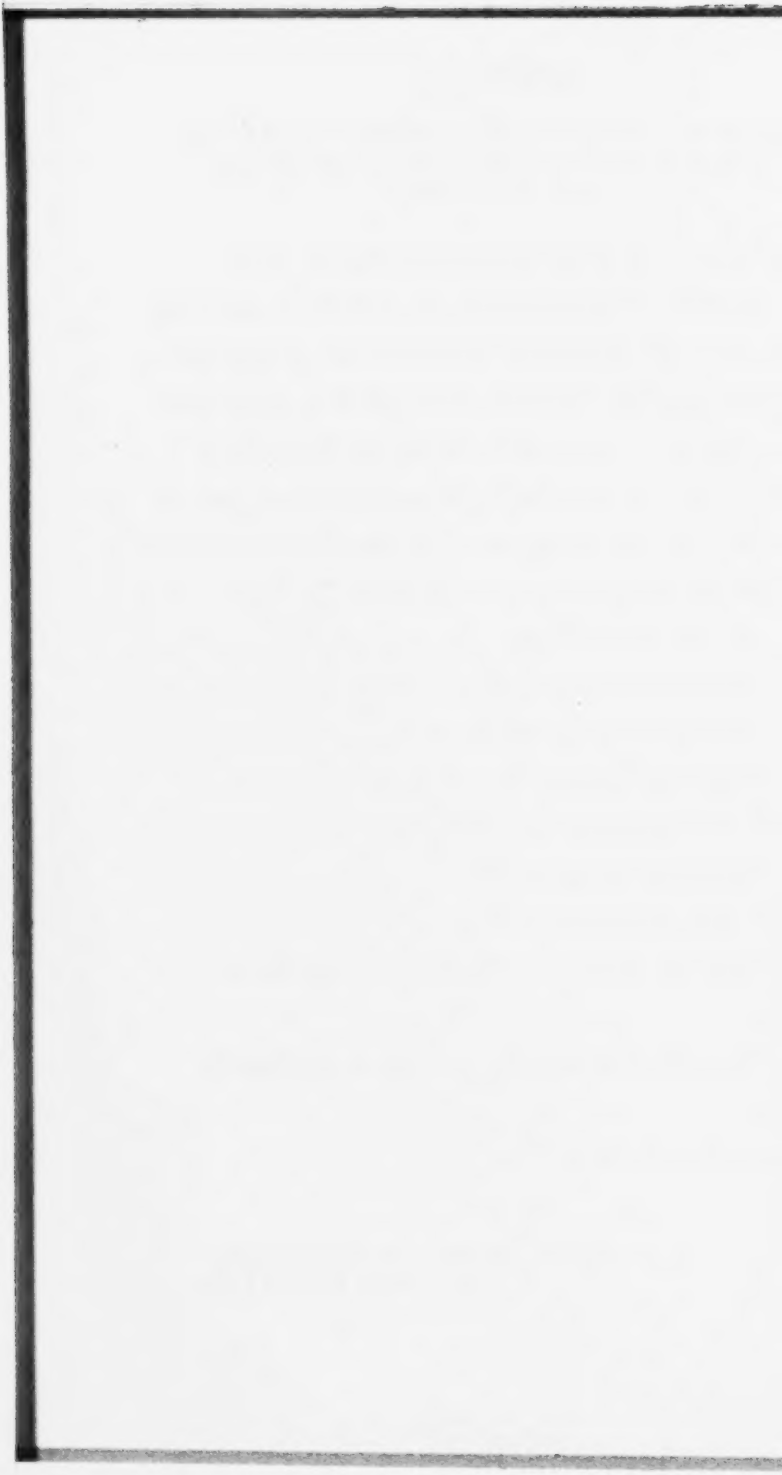
Good cause appearing therefor,

THIS COURT HEREBY ORDERS AND ADJUDGES as follows:

1. The motions as set forth above, made by Plaintiff, are denied.

Dated: May 23, 1972.

(signed) ROBERT H. SCHNACKE
United States District Judge



APPENDIX D

NOTICE OF GRANTING ORDER SERVED BY MAIL ON MAY 31, 1972 AND FILED JUNE 7, 1972

To each party and to the attorney of record for each party in this action:

PLEASE TAKE NOTICE that on May 23, 1972, the above Court entered an order denying motions made by Plaintiff and presented before this Court on May 17, 1972.

The motions denied by this Court are more particularly described as follows:

1. Motion for New Trial;
2. Amendment to the Court's Findings;
3. Amendment to the Judgment;
4. Joinder of Claim by Plaintiff Against Defendant, RAILWAY EXPRESS AGENCY, INC. (REA) for Tort;
5. Motion for Change of Venue.

DATED: May 31, 1972.

DREHER, DREHER & GARFINKLE

(signed) EUGENE GARFINKLE
Attorneys for Defendant, RAILWAY EXPRESS AGENCY.

APPENDIX E

Pleadings and Documents filed by Petitioner, in brief, from March 15, 1972, to the filing of the Petition for Certiorari:

A Seeking to have the District Court Review its Summary Judgment

1. "Notice of Motions and Motions In Findings By The Court, Rule 52(b), And For New Trial Or Amended Judgment By Rule 59 (a)(e)", dated and filed March 24, 1972;

2. "Memorandum In Support Of Motions In Rules 52 and 59" dated March 24, 1972 and presumably filed on that date;

3. "Affidavit Recusing Judge, and Embodying Move For Change of Venue," dated April 5, 1972 and presumably filed on that date;

4. "Certificate Of Samuel Schneideman" dated and filed April 5, 1972;

5. "Certificate Of Samuel Schneideman" (In Support of Motions In Rule 59 Filed March 24, 1972") dated and filed April 12, 1972;

6. "Affidavit Of Plaintiff" ("In 28 U.S.C. Section 144 Recusation of Judge") dated May 3, 1972, and presumably filed on that date;

7. "Certificate Of Samuel Schneideman" ("In 28 U.S.C. Section 144 Recusation of Judge"), dated and filed May 4, 1972.

The court by order dated and filed on April 7, 1972, first ordered stricken and dismissed certain of the above fillings and

then admonished Plaintiff against filing further "false and frivolous papers." By order dated and filed May 5, 1972, the court struck the filings of May 4, 1972, and held Plaintiff in contempt of court for violation of the prohibition of the order of April 7, 1972.

B Documents filed to Commence Appeal

Petitioner filed the following documents with the District Court:

1. "Supersedeas Surety In Appeal" dated and filed May 11, 1972.

2. "Notice Of Appeal To The Ninth Circuit Court From An Order Of This Court" dated and filed May 11, 1972;

3. "Motion For Stay Of Order Pending Appeal" dated and filed May 11, 1972.

Upon the "Motion For Stay" being denied, Petitioner filed with the United States Court of Appeals For the Ninth Circuit the following document: "Stay Or Injunction Motion For Supersedeas With Application To A Single Judge" dated and filed on May 15, 1972. This motion was denied by Order filed May 16, 1972.

Thereafter, Petitioner filed with the District Court documents entitled:

1. "In Transmission Of Record On Appeal" dated and filed on May 17, 1972;

2. "Supplementary Notice of Appeal" dated and filed May 31, 1972;

3. "Request That Court Reporter Deliver Transcripts To The Clerk Of The Court" dated and filed June 7, 1972;

4. "Supplementary Notice of Appeal" dated and filed June 7, 1972.

C Documents filed with the United States Court of Appeals for the Ninth Circuit on Appeal and Orders

An opening brief was filed by Petitioner on August 7, 1972, and a reply brief was filed by REA on September 21, 1972. Petitioner's closing brief was filed September 2, 1972. Thereafter, Petitioner filed the following documents with the Court of Appeals:

1. On September 29, 1972, document entitled "Motion By Appellant To Strike Nunc Pro Tunc, Items From The Judgment Of Court Below As Being Inadequately Stated, Abortive To Purpose And Anomalously Invalid." Attached to this document was a Proposed Order.

2. Also on September 29, 1972, a document entitled "Motion By Appellant To Strike Nunc Pro Tunc, Item From An Order Of Court Below As False." A Proposed Order was also attached to this "Motion".

3. On October 12, 1972, a document entitled "Appellant's Motion For Sanctions Against Appellee, Railway Express Agency's Falsehoods, With Move To Strike Same And False-Based Inferences And Implications From Its Pleadings."

4. On October 16, 1972, a document entitled "Appellant's Reply To Appellee Railway Express Agency, Inc.'s Opposition To Appellant's Motion For Sanctions."

On October 17, 1972, the Court of Appeals issued its Order denying Petitioner's "motions." A copy of this order is reproduced in Appendix F hereto.

5. On November 20, 1972, a document entitled "Motion By Appellant For Leave To Augment Appellant's Reply Brief To Appellee Railway Express Agency, Inc." This motion was denied by the Court of Appeals on November 22, 1972.

6. On October 3, 1973, pursuant to Court of Appeal Rule 3(a) document entitled "Supplement Support Of Appellant's Two Briefs."

7. On October 4, 1973, a document entitled "Affidavit By Plaintiff-Appellant In Rebuttal Of Perjurious Filings By The Defense."

The Court of Appeals filed its Memorandum opinion on October 15, 1973, denying Petitioner's appeal, and upholding the District Court's judgment. Thereafter Petitioner has filed with that Court:

1. On October 29, 1973, a "Petition For Rehearing", which Petition was denied by court order filed November 9, 1973.

2. On December 13, 1973, a document arguing that the memorandum opinion of the Court of Appeals was wrong and seeking to amend it, and attaching a proposed modified "Amended Memorandum."

APPENDIX F

ORDER OF NINTH CIRCUIT COURT OF APPEALS
NO. 72-1859

Before: MERRILL and DUNIWAY, Circuit Judges

Appellant has moved to strike portions of the judgment of the District Court nunc pro tunc as being inadequately stated and as being frivolous, and for sanctions to be imposed against appellees and to strike portions of appellees' brief. All of appellant's motions in these respects are denied.

(signed) _____

(signed) _____
Circuit Judges

CERTIORARI DENIED